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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/086,374	10/22/2001	Thomas P. Castellano	PW 69816 277438	2693
27496	7590	03/26/2004	EXAMINER	
PILLSBURY WINTHROP LLP 725 S. FIGUEROA STREET SUITE 2800 LOS ANGELES, CA 90017			THOMPSON, MICHAEL M	
			ART UNIT	PAPER NUMBER
			3763	/ /

DATE MAILED: 03/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/086,374	CASTELLANO, THOMAS P.
	Examiner	Art Unit
	Michael M. Thompson	3763

-- Th MAILING DATE of this communication appears on the cov rsh t with th correspond nc address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 16 January 2004.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1 and 3-29 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) 1 and 3-21 is/are allowed.

6)  Claim(s) 22-28 is/are rejected.

7)  Claim(s) 29 is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2-5.  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_.

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election with traverse of the restriction requirement in Paper No. 9 is acknowledged. The traversal is on the ground(s) that the claims are no longer meet the requirements for restriction as newly amended. This is found persuasive therefore the restriction has been withdrawn.

### *Information Disclosure Statement*

2. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892 or PTO-1449, they have not been considered.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 22-23 and 27-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Beale et al. (4,693,339). Beale et al. teaches a diffuser through which gas flows comprising an air passage about its circumference and at least three aerodynamic fins (74), wherein the fins include a said fins being disposed in such a manner so as to aid in gas flow through the air

passage and wherein the fins are substantially parallel to the direction of gas flow. The diffuser further including a central axis (66) member being affixed to at least one fin (74) wherein the central axis member is bullet-shaped.

5. Claims 22-23 and 25-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Church (4,572,942). Church teaches a diffuser including an O-ring (16), through which gas flows comprising an air passage about its circumference and at least three aerodynamic fins (26), wherein the fins include a said fins being disposed in such a manner so as to aid in gas flow through the air passage and wherein the fins are substantially parallel to the direction of gas flow.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Church ('942) or Beale et al. (4,693,339). Both Church and Beale et al. teach all of the limitations of the claims except for explicitly reciting that the first end of the fins be a sharp edge. It is the Examiner's position that it would have been an obvious matter of design choice to potentially sharpen the edges of the fins, since applicant has not disclosed that sharpening the edges of the first end of the fins solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with the edges as taught by Church. Furthermore, it is the Examiner's position that a change in the shape of the prior art device is a design consideration

within the skill of the art in light of the arguments above. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966)

***Allowable Subject Matter***

8. Claims 1 and 3-21 are allowed.
9. Claim 28 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

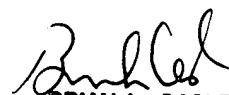
**Contacts**

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Michael Thompson whose telephone number is (703) 305-1619. The Examiner can normally be reached on Monday through Friday from 9 am to 5 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Primary, Brian Casler, can be reached on (703) 308-3552. The official fax phone number for all submissions to the organization where this application or proceeding is assigned is (703) 872-9306.

Michael M. Thompson

Patent Examiner

  
**BRIAN L. CASLER**  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700

MT   
March 19 2004